

PRODUCERS LLOYDS INSURANCE COMPANY,) AGBCA No. 99-104-F

Appellant)

Representing the Appellant:)

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DECISION OF THE BOARD OF CONTRACT APPEALS

October 21, 1999

OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY

This appeal arose under a Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government corporation within the U. S. Department of Agriculture, and Producers Lloyds Insurance Company of Amarillo, Texas (Appellant). Under the SRA, Appellant sells and administers Multi-Peril Crop Insurance (MPCI) policies in furtherance of the Government's crop insurance program.

Appellant paid \$121,692 in indemnities to various MPCI policyholders. The Risk Management Agency (RMA), which administers the crop insurance program for FCIC, seeks reimbursement of these indemnities on the basis that Appellant failed to follow approved FCIC policies and procedures in paying the indemnities. Appellant appealed the final administrative determination of RMA to the Board. The Board has jurisdiction under 7 C.F.R., part 24 and 7 C.F.R. § 400.169(d).

Certain cotton and sorghum crops were allegedly lost because of drought. Appellant released the affected acreage and accepted liability on newly planted different crops. Appellant's position was that its adjusters performed their adjustment based on their knowledge of the drought and by digging seeds from the soil to examine their conditions.

FCIC's position was that while seed germination and vigor are adversely affected when seed lies in soil with inadequate moisture for an extended time, the seed is nevertheless viable and viability cannot be determined from seed examination. Appellant provided the opinion of experts disputing this conclusion. FCIC stated that its loss adjustment manuals required maintenance of representative crop production areas and deferral of new crop production until the sample area production could be evaluated. FCIC also noted that the replanted crops resulted in production, indicating that there would have been production from the original crops, since the drought conditions had not changed.

Appellant countered that RMA's Regional Service Office (RSO) authorized the release of the planted sorghum and cotton acreage to the planting of different crops so that insurance could attach to the second crop. FCIC stated that deviation from the procedures set forth in the loss adjustment manuals must be specifically requested from the RSO and that Appellant never made such a request, irrespective of letters issued by the RSO.

The Board convened several telephone conference calls to narrow the issues and assist in settlement, and on June 23, 1999, a non-binding mediation was held in Washington, D.C., by Administrative Judge Joseph A. Vergilio. The mediation did not result directly in a settlement, and the appeal was transferred to Administrative Judge Edward Houry. During an August 10, 1999, telephone conference call to schedule the balance of the proceedings, the parties informed the Board that their clients were in the process of negotiation and that a settlement appeared likely. On August 27, 1999, Government counsel advised that a settlement agreement had been signed and that the Board should soon be receiving a request from Appellant that the case should be dismissed.

On October 6, 1999, Appellant's counsel confirmed by telephone that the appeal had been settled and that it could be dismissed.

DECISION

The appeal is dismissed as settled.

EDWARD HOURY
Administrative Judge

Concurring:

ANNE W. WESTBROOK
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D. C.
October 21, 1999